**Federal Ombudsman's Report**
**on the Status of Nonresident Workers**
**in the Commonwealth of the Northern Mariana Islands:**
**Current Conditions, Issues and Trends in the CNMI**

**March 29, 2006**

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This report is intended to provide a frank and concise summary of the status of the CNMI's Nonresident Worker program, including current issues and trends, and to identify certain baselines or benchmarks that may be useful in assessing the progress of the federal and local government in addressing those concerns.

Significant progress in addressing labor abuses has been made since the creation of the Federal Ombudsman's Office, and the past several years have seen some solid accomplishments by the government of the CNMI: the CNMI government has a very cooperative relationship with the Federal Ombudsman and federal enforcement agencies; the CNMI government has negotiated agreements with the Chinese Economic Development Association (CEDA) to pre-screen Chinese nationals coming to work in the CNMI, limit the fees the workers can be charged by approved recruiters, and to intercede on the workers' behalf when a dispute arises; implementation of the secondary preference for jobless alien workers already present in the CNMI[1]; comprehensive revision of the Alien Labor Rules & Regulations, to guarantee due process rights to alien worker complainants; and establishment of a refugee protection program, among others.

[1] See 3 CMC § 3603: "No exemption [from the moratorium on hiring nonresident alien workers] shall be available under 3 CMC § 4601 if there is a nonresident worker already lawfully in the Commonwealth, seeking employment, and eligible and qualified for the position."

Unfortunately, there are still a number of serious problems that have yet to be effectively addressed by local government officials: ensuring the health and safety of alien workers; inadequate prevention efforts to curb labor abuses, through periodic regulatory inspections; unacceptable delay in investigating and adjudicating worker complaints, due to failure to allocate sufficient resources to the Department of Labor; difficulty in rooting out corruption within the agencies tasked with regulating alien entry and work permitting; and an inability or unwillingness to prosecute repeat offenders.

This report was produced in response to a Congressional Directive by the Appropriations Committee, "The Committee directs the Office of Insular Affairs to . . . report annually to Congress on immigration, labor, and law enforcement conditions, issues, and trends in the CNMI." *FY 2006 Appropriations Committee Congressional Directives*. As this is the first such report produced, there is a lack of accurate information in certain areas. It is expected that with each successive report more information will be available, including: average time to conclude a CNMI Labor investigation, average time from complaint to adjudication, and the number of annual regulatory inspections, to name but a few.

*Introduction: Background and history of the Federal Ombudsman's Office*

The Federal Ombudsman's Office was created by the U.S. Congress in 1998, "to provide workers with the opportunity to state claims to a federal official who can then assist the worker in the appropriate handling of such claims by a local or federal agency." The office was created in response to a cascade of unfavorable news stories documenting labor and human rights abuses against alien workers in the CNMI.

The Ombudsman's Office screens worker complaints to determine whether there may be violations of the Nonresident Workers Act, the Minimum Wage & Hour Act, the Alien Labor Rules & Regulations, or breaches of the worker's contract. The office also screens for violations of Title VII of the Civil Rights Act, the Fair Labor Standards Act, and other federal laws. If it appears that the contract has been breached or one of the statutes has been violated, the worker is referred to an appropriate federal or local enforcement agency, and assistance is provided to the worker in communicating with investigators, hearing officers and other persons who may assist with the complaint.

Since its inception in 1999, the Federal Ombudsman's Office has assisted well over 5,000 alien workers with complaints including abandonment by the employer, non-payment of wages, barracks lockdowns, illegal deductions from paychecks, national origin discrimination, sex discrimination, and numerous others. Although the bulk of such complaints are filed with the CNMI Department of Labor, many referrals have also been made to the CNMI Attorney General's Office, the U.S. Department of Labor's Wage & Hour Division, the U.S. Equal Employment Opportunity Commission, the Federal Bureau of Investigation, the United States Attorney's Office, and other federal and local agencies.

*Cooperation between Ombudsman's Office and other entities*

At the present time, the Federal Ombudsman's Office is perceived as an ally by the local government. In a recent meeting, Governor Fitial expressed his desire to work cooperatively with the Ombudsman's Office on labor issues, and invited the Ombudsman to contact him directly to discuss labor and immigration issues. Attorney General Gregory and the Ombudsman are in frequent contact on a variety of issues of mutual concern.

OIA, through its Technical Assistance grants, provides much of the funding for the CNMI Department of Labor's administrative hearing officers and legal counsel. Technical Assistance grants also fund a number of positions within the CNMI Division of Immigration, including assistant attorneys general handling deportation and other immigration litigation.

Local government agencies, including the Department of Labor, Division of Immigration, Attorney General's Office, Public Defender, Superior Court, Department of Public Safety and Attorney General's Investigation Unit, all utilize the Ombudsman's staff of professional interpreters.

Pursuant to a Memorandum of Agreement between the CNMI Department of Labor and the Federal Ombudsman's Office, the Department of Labor submits all proposed changes in policies, procedures and regulations to the Federal Ombudsman for comment prior to their adoption. The Department of Labor and the Ombudsman's Office have also worked together to conduct hearings and orientations for large numbers of nonresident workers who require special briefings in their native languages.

Federal enforcement agencies work closely with the Federal Ombudsman's Office on a variety of issues, and rely on its staff of professional translators. The Ombudsman refers a significant number of cases to the E.E.O.C. and the U.S. Department of Labor's Wage & Hour Division. At the request of the Ombudsman, training and assistance to local government enforcement personnel has been conducted by both the EEOC and U.S. Labor.

Referrals are also made to the FBI on a regular basis, and referred cases have been accepted for criminal prosecution by the U.S. Attorney's Office in the Federal District Court.

Bimonthly conference calls between the various federal enforcement agencies, their respective solicitors, and the Ombudsman's Office, collectively referred to as the "Labor Enforcement Group," allow the agencies to share information, avoid duplication of effort, conserve resources and swiftly respond to reported labor and civil rights violations.

The Federal Ombudsman also consults with consular officials, including Consul General Wilfredo Maximo of the Republic of the Philippines and Consul General Zhong Jianhua of the People's Republic of China, on various issues pertaining to the health and welfare of their foreign nationals working in the CNMI. The Federal Ombudsman also works cooperatively with the Chinese Economic Development Association ("CEDA"), a quasi-governmental organization, to improve the delivery of services to Chinese nationals working in the Northern Marianas.

Cooperative relationships have also been forged with private-sector entities, such as the Saipan Chamber of Commerce, the Garment Oversight Board and the Saipan Garment Manufacturers' Association.

**Current assessment**

Cooperation between the Federal Ombudsman's Office and local government agencies, federal enforcement agencies, private-sector entities and consular offices is at an all-time high. This development represents a significant improvement over the situation as it existed only five years ago.

Enforcement efforts by some federal agencies have been somewhat sporadic in the past, as a result of limited resources, the remoteness of the CNMI, the expense of providing an enforcement presence, and the perception that larger or more populous jurisdictions should be a higher priority than the CNMI is for the agencies' dwindling enforcement dollars. Every effort should be made to preserve the cooperative relationship the Office now enjoys, and to continue to enhance the enforcement response to labor problems in the Commonwealth.

**The Nonresident Workers Act provides a workable framework for regulating the use of alien labor in the Commonwealth**

How the people of the Commonwealth, through their elected representatives, choose to develop and implement public policy, including policies on immigration, minimum wage and use of alien workers, is not normally the purview of the federal government. However, to the extent that policy choices about how alien workers are used create an inherently abusive or exploitative system, they violate federal law and must be addressed. By the same token, immigration policies that do not provide sufficient safeguards to verify the identity of those entering the Commonwealth, or the authenticity of travel documents, implicate the national security of the United States, and must be rectified.

The discussion of the CNMI's Nonresident Workers Act that follows is not intended to be an assessment of the wisdom of the CNMI's policy on using nonresident workers; rather, it is an attempt to describe the current situation in the Commonwealth accurately, so that future progress by current and future administrations can be measured.

**Nonresident Workers Act: Policy**

The Nonresident Workers Act, Public Law 3-66, which took effect in 1983, as the number of contract workers started to rise, articulates the policy of the Commonwealth with respect to utilization of alien workers in the CNMI. According to the stated policy, it is essential that "residents be given preference in employment" over nonresident workers, and that "any necessary employment of nonresident workers in the Commonwealth not impair the wages and working conditions of resident workers." 3 CMC § 4411.

The legislative findings in the policy section of the Act also provide that "employment of nonresident workers should be temporary and generally limited to the duration of the specific job or employment for which the alien was referred." *Id.* Other imperatives of the Act include: "generat[ing] reliable data upon which more specific alien labor policies can be developed," "provid[ing] stricter enforcement, control and regulation of nonresident workers," and ensuring that "at the end of five years resident workers comprise at least 20 percent of every employer's management, supervisory and nonsupervisory work force." *Id.*

The focus of this report is the Commonwealth's progress in implementing its policy of providing "stricter enforcement, control and regulation of nonresident workers," consistent with the Federal objective of ensuring that wages and working conditions of all workers are compliant with federal law.

**Current assessment**

The Act's promise to provide "stricter enforcement, control and regulation of nonresident workers" has not been realized, due to a failure to allocate sufficient resources to enforcement personnel. The CNMI Department of Labor itself labors over a backlog of some 2,000 cases filed in years past which remain, to date, uninvestigated and un-adjudicated. A critical shortage of trained enforcement personnel and administrative hearing officers has virtually paralyzed Labor, which currently takes many months to investigate even the most routine claim for back wages.

**Nonresident Workers Act: Regulatory framework**

The Nonresident Workers Act, Public Law 3-66, provides a workable regulatory framework for the utilization of nonresident workers by employers in the Commonwealth.

The Act establishes a preference for resident workers (3 CMC § 4413), outlines a procedure for notice to the Department of Labor and the general public of job vacancies (§ 4431 *et. seq.*), and mandates that qualified resident workers be hired for such vacancies. *Id.* It allocates funds for the development of business, tourism, industrial/technical or professional programs, as well as youth employment programs, from the fees collected for nonresident worker employment applications and renewals. 3 CMC § 4424.

The Act also empowers the Department of Labor to investigate and enforce the provisions of the Nonresident Workers Act, the Minimum Wage & Hour Act, the Alien Labor Rules & Regulations[2], and any contract for nonresident worker services, and to adjudicate worker complaints. 3 CMC § 4441 *et. seq.*

The Act also provides important protections to safeguard the rights of nonresident workers, including provisions establishing that:

- all fees for application and renewal are the responsibility of the employer, who may not pass that cost on to the worker (3 CMC § 4424(a)(5));
- the Secretary of Labor must approve all contracts for the employment of nonresident workers (§§ 4433, 4437);

[2] The ALR&R underwent a comprehensive revision in 2004 as a result of U.S. District Court litigation challenging the constitutionality of the Nonresident Workers Act.

- the employer must purchase a bond ensuring the payment of back wages, unpaid medical bills and repatriation to the point of hire, in the event of the employer's insolvency (§§4433, 4435);
- employers are prohibited from taking deductions from a worker's paycheck, except for taxes, social security withholdings, and the actual cost of room and board, not to exceed $100 per month (§4434);
- employers must pay their workers in full every two weeks, and provide a written statement of hours worked, including any overtime, the hourly rate of compensation, and any deductions taken (§4436);
- employers must pay workers the applicable minimum wage (§4437);
- the employer is responsible for the cost of medical insurance or medical expenses for each worker he or she employs (§ 4437);
- the employer must provide each worker a copy of his or her employment contract, and may not withhold the worker's permit, travel documents, or other identification (§4437);
- the employer must keep payroll records and records of worker illness and injury, and make such records available for inspection upon request (§4437);
- the Department of Labor is authorized to inspect worksites and employer provided housing (§ 4437);
- the worker is entitled to a hearing before a neutral hearing officer on any complaint against his or her employer (§4444), and if necessary, to administrative review of the hearing officer's decision (§4445), and subsequent judicial review (§4446);

- the worker who prevails in an action against his employer is entitled to remedies including attorney fees and costs, liquidated damages, the right to transfer to another employer, and the right to work pending the adjudication of the complaint; and
- a worker with an administrative order awarding back wages may assign his right to collect such wages to the Commonwealth, and obtain up to three months' wages and a plane ticket to his point of hire from the Commonwealth.

**Current assessment**

The Nonresident Workers Act, Minimum Wage & Hour Act and Alien Labor Rules & Regulations give the CNMI Department of Labor all the tools it needs to fulfill its mandate. While these enabling statutes are often attacked as archaic and inefficient (and while those criticisms may indeed be accurate), the most serious deficiencies with the CNMI Department of Labor's performance are related to execution of its enforcement role, as discussed below.

Unfortunately, frustration with certain aspects of the process, e.g., the length of time it takes the Department of Labor to investigate labor complaints, has provoked a desire for a decisive legislative response. In reality, most of the legislation that has been introduced thus far would do little to address the real difficulties the Department of Labor has in doing its job, and would probably be counterproductive.

To make matters worse, legitimate frustration over frivolous complaints or other abuses may result in resentment of alien workers, and a desire to make it more difficult for them to seek legal redress for their legitimate grievances. Because of this underlying

resentment, many of the "solutions" to the CNMI's labor problems may seem spiteful, and may reinforce the irrational denials of some that labor abuses continue to occur.

Legislation has already been introduced by the 15th Commonwealth Legislature, in the House of Representatives[3], that would, among other things:

- deny workers the right to transfer to another employer, no matter what labor abuse was committed by the employer;
- prohibit the Department of Labor from allowing a worker who had filed a complaint against his employer to legally work to support himself while the case was pending;
- allow employers to require their employees to remain in their barracks during their off-hours, without compensating them for their time;
- eliminate the provision requiring an award of liquidated damages to a worker who prevails in a claim for back wages;
- eliminate the prohibition on taking illegal deductions from workers' paychecks;
- eliminate the requirement that an employer pay his employees in full, at least biweekly;
- eliminate the requirement that an employer keep a record of payrolls, and that it be made available for inspection upon request by the Department of Labor;
- eliminate the current prohibition on retaliation against a worker who files a labor complaint; and
- repeal the provision allowing a worker to be repatriated to his point of hire at the Commonwealth's expense if his employer is unwilling or unable to repatriate him.

[3] *See* House Bill 15-38, which has seven co-sponsors.

What happens in the Commonwealth Legislature with HB 15-38[4] and similar legislation is probably the best indicator of whether the new Administration will continue past progress in rectifying labor problems in the CNMI. Passage of legislation that would have the effect of repealing due process rights of alien workers, or that would substantially impair enforcement efforts, should be cause for alarm.

Members of the 15th Legislature have promised the Federal Ombudsman the opportunity to provide comments on legislation affecting the rights of nonresident workers, and several requests for comment have been received by our office to date.

[4] Recently, the Chairwoman of the JGO Committee in the House of Representatives, Rep. Cinta Kaipat, decided to convene a Task Force to discuss what she acknowledges are necessary changes to HB 15-38.

**Nonresident Workers Act: Enforcement**

Enforcement of the provisions of the Nonresident Workers Act involves at least three distinct processes: prevention, administrative enforcement, and criminal prosecution. Prevention includes regulatory inspections of worksites and employer-provided housing to ensure compliance with health and safety regulations and to verify permit status; spot-checking applications and other documents randomly for more-than-routine scrutiny prior to approval; and outreach to employers so they may better understand what the law requires of them.

Administrative enforcement focuses on the timely mediation, investigation, and adjudication of worker complaints, and enforcement of administrative orders issued at the conclusion of that process. It also includes corrective action by the Director working directly with employers after it is determined that a violation has occurred.

Criminal prosecution should be resorted to when criminal laws have been violated, or when administrative enforcement has proved to be ineffective in deterring chronic violators from engaging in prohibited practices.

*Prevention*

According to Secretary of Labor Gil M. San Nicolas, the Department's Health & Safety Unit has two full-time inspectors who conducted a total of 1,543 worksite and barracks inspections in 2005 at the request of employers wishing to employ nonresident workers.[5] San Nicolas says the Department does not have enough inspectors, given the number of worksites and barracks that need to be inspected, for effective prevention.

[5] A prerequisite to employing nonresident workers is requesting such an inspection from the Department of Labor.

Few, if any, unannounced regulatory inspections have been conducted, since a ruling in February of 2000 in a U.S. District Court case[6] invalidated several provisions of Commonwealth law authorizing questioning of illegal aliens and inspection of their worksites. Corrective legislation languished for several years, and after passage, was found to be overly restrictive of the authorities' right to conduct regulatory inspections. The attorney general and the Department's legal counsel are currently examining this issue and hope to submit draft legislation to correct the problem in the next several months.

Given the difficulty outlined above, and its shortage of trained personnel, the Department may perhaps be forgiven for prioritizing the investigation of probable violations that have already come to light over those that might be discovered during preventive inspections.

*Administrative enforcement*

Administrative enforcement is where the Department has focused nearly all of its effort in the past few years. Unfortunately, there are still a number of problems with the Department's process for dealing with worker complaints.

In the *Federal—CNMI Initiative on Labor, Immigration, and Law Enforcement in the Commonwealth of the Northern Mariana Islands,* Fourth Annual Report (1998), worker exploitation was identified as an ongoing problem:

> The CNMI continues to have difficulty protecting the rights and welfare of the indentured alien workers now in the CNMI. The workers are easily exploited and subject to a variety of abuses. For example, over the past year, hundreds of alien workers have fallen victim to illegal and fraudulent immigration scams where they pay large sums of money to fraudulent recruiters only to arrive in the CNMI to find there are no jobs due to the lack of appropriate safeguards in the CNMI's immigration system. Additionally, many workers who do find jobs often are

[6] *Gorromeo v. Zachares,* Civil Action No. 99-0018.

> subjected to "payless paydays" in which their employers fail to pay the correct wages or do not pay their workers at all. In certain industries, especially in the garment and entertainment industries, workers routinely pay substantial fees (U.S. $3,000 or so) for the promised jobs in the CNMI.

While the numbers for certain of the violations mentioned in the report—notably illegal recruitment—have been substantially reduced, there has been little progress in curbing other abuses.

The health and safety of the CNMI's nonresident workers remains at risk. A number of alien workers are injured and killed each year as they attempt to cross the streets of Saipan. Many stretches of road frequented by nonresident workers do not have sidewalks, and designated crosswalks are few and far between. Existing crosswalks are poorly marked and unlit. Heavy window tinting, which prevents drivers from seeing workers as they attempt to cross the roads at night, remains completely unregulated.

Recently, two unrelated auto-pedestrian accidents resulted in the deaths of two alien worker pedestrians within days of each other. In one of those incidents, the driver fled the scene without stopping to render assistance. News reports have indicated witnesses gave a description of the vehicle, yet the police have made no arrests. In a letter dated February 15, 2006, the Federal Ombudsman made a written request for information concerning the death of these pedestrians, and the status of the CNMI government's investigation into them. To date, no reply has been received.

The Ombudsman's Office has sent numerous letters documenting ongoing illegal recruitment scams, largely from Chinese provinces supposedly banned from sending their workers to the CNMI. Although not nearly as prevalent as they were at the time of the

previous report,[7] illegal recruiting scams are considered "very widespread," and still victimize a significant number of desperate job seekers, particularly from rural China.[8]

In letters dated October 17, 2005, November 1, 2005, and November 7, 2005, the Federal Ombudsman requested investigations into three separate recruiting scams. Each involved the payment of up to $7,200 for a job in Saipan. Each recruited workers from Putian, in Fujian Province, which has been barred from sending workers to Saipan pursuant to an emergency regulation promulgated by the previous attorney general, due to the unreliability of travel and identity documents from that province. Each involved the speedy delivery of AFE's (authorization for entry letters), and in some cases, completed contracts with the workers' signatures forged onto them at the time of delivery. These cases have reportedly been referred to Division of Immigration investigators.

The failure to timely pay a worker's wages remains the most frequent complaint of workers who seek the assistance of the Federal Ombudsman. This type of case accounts for fully one-third of the Ombudsman's caseload.

There is a backlog of several thousand unresolved cases, some of which date back to the late '90s. Many of those cases involve employers who have gone out of business and left the CNMI. There does not appear to be any reason why such cases should

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[7] The prior report references "hundreds" of workers who fell prey to illegal recruiting scams in the year preceding the issuance of the report. There is no indication that the scams occurring in the last few years are nearly that numerous.

[8] Part of the reason the numbers have fallen off is undoubtedly the Superceding Agreement negotiated between the CNMI and the Chinese Economic Development Association, a quasi-governmental entity that is part private trade organization, part governmental economic development agency, and part-time consular office for Chinese nationals living and working in the CNMI. Under the latest version of the agreement, CEDA screens virtually all workers from China, and will not approve their entry to the CNMI unless they have been lawfully recruited by a recruiting agency that is recognized by CEDA and which has agreed to abide by the terms of the Superceding Agreement. Also under that agreement, recruiting fees charged by legitimate recruiters are capped at 12.5% of the annual contract amount—about $600—in total.

remain open, given the employers' abandonment of the workers, and the unavailability of the employers to answer questions or provide documentation concerning the workers' complaints.

At the current time, the Department has five investigators assigned to its enforcement office. Some of them are trainees, and few have more than a year's experience as investigators. On average, there are approximately 500 complaints filed each year with the Department, in addition to a lesser number of compliance agency cases initiated by the Director of Labor. This averages out to 100 or more cases per investigator. Given the fact that there are only 250 work days in a calendar year, each investigator has, on average, two-and-one-half work days to complete each investigation and issue a determination. Because of the shortage of trained investigators, even the most routine investigation into, for example, a complaint for failure to pay wages, takes the Department six to 12 months to investigate.

Secretary San Nicolas candidly admits that his Department needs to double the number of trained enforcement personnel in order to handle the current load of cases, and continue its efforts to clear the backlog of cases that have accumulated in previous years.

The long delay in investigation of worker complaints has resulted in complaining workers being forced to obtain memoranda to seek temporary work in order to support themselves. Some workers do not attempt to actually find work, but use their status as the holder of a memorandum as an excuse to stay home and baby-sit, or to work incidental jobs illegally. Others are simply unable to find work due to the Commonwealth's economic downturn. It is not uncommon for workers to remain in this

status for several years, while they wait for their case to be investigated and for a hearing to be scheduled.

If a worker holding a memorandum succeeds in finding a temporary employer, a temporary work authorization permit (TWA) is issued for a period of 90 days. Given the delay in investigation and adjudication, it is not uncommon for workers to work under TWA's for several years.[9]

In years past, many employers found it advantageous to hire workers with TWA's, since they did not have to commit to a full, one-year contract with a worker. Also, workers with TWA's did not count towards garment factories' allocations under the "cap," so a manufacturer who wanted to expand his workforce could simply hire one or more of an available pool of workers under TWA. Workers also benefited from obtaining TWA's in the past, since they were obligated to an employer for only 90 days, and could easily transfer to another employer who might be paying overtime.

However, some employers resent the availability of TWA employment, and the ability of workers to transfer to other employers. In their view, it is far too easy for a worker, whom the company has spent thousands to recruit, to file a complaint alleging some *de minimus* violation of the Alien Labor Rules & Regulations, then shop his services around to other factories for years under TWA while the complaint collects dust in Labor's enforcement section. This situation disproportionately affected the larger manufacturers, and aided the smaller factories and subcontractors, who paid no recruiting costs for the worker.

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[9] A recent news story reported that "27 former workers of a now defunct construction company . . . had to wait seven to nine years to get justice for the labor abuses they had to go through at the hands of their employer, CWM, Inc." ("1997-1999 labor abuse victims get justice in 2006," *Marianas Variety,* March 14, 2006).

Because the larger manufacturers tend to have the ear of CNMI policymakers, their frustration with TWA employment soon became the impetus for "reform" legislation targeting the abuse of TWA's and seeking to eliminate a worker's right to transfer to another employer. To date, there is no statistical information to show that TWA employment has negatively impacted any industry or stated policy objective in the Nonresident Workers Act.

*Criminal prosecution*

The Nonresident Workers Act and Minimum Wage & Hour Act provide criminal penalties for certain violations. For example, "[a]ny employer or employer's agent who discharges or discriminates against any employee because the employee has made a complaint to the employer, to the director, or to any other person that the employee has not been paid wages in accordance with this chapter," is guilty of a misdemeanor under 4 CMC § 9242(a)(3).

Likewise, "[a]ny employer or employer's agent who pays or agrees to pay any employee compensation less than that which the employee is entitled to under this chapter," is guilty of a misdemeanor under 4 CMC § 9242(a)(4). Also guilty of a misdemeanor is "[a]ny employer who willfully violates any provisions of this chapter."

The Department of Labor can also permanently bar an employer from using nonresident workers. 3 CMC § 4444(e).

Despite the availability of such sanctions, and the existence of a number of chronic offenders, there is little or no political will to criminally prosecute employers, even those who are repeat violators. Permanently barring employers from using

nonresident labor is very rare; only six employers were permanently barred in 2005, in a year when almost 500 complaints were filed, and some 352 hearings conducted.

A particularly egregious example of a chronic offender the government has not prosecuted, not barred from using nonresident workers, or even required to comply with existing law, is Island Security Service, Inc.

Since November 20, 2002, the Ombudsman's Office has written a number of letters requesting investigation and enforcement action against Island Security Services, Inc. ("ISS"), including referral to the Attorney General for possible prosecution if the investigation revealed a willful pattern of violations. ISS has been the subject of prior enforcement actions for non-payment of wages brought by the CNMI Department of Labor and the U.S. Department of Labor's Wage/Hour Division.

In November, 2002, the Ombudsman advised the CNMI Director of Labor that at least five employees of ISS were owed as many as 14 paychecks, i.e., they had not been paid for seven months. The letter was copied to the governor and the attorney general.

In March of 2003, the Ombudsman advised that more complaints had been received, and that "most, if not all" of ISS's employees had not been paid for several months.

In September of 2003, the Ombudsman again wrote to the Director of Labor, informing him of additional complaints from ISS's workers, one of whom said he was owed 23 paychecks. "Virtually all of the nonresident Bangladeshi and Filipino workers" were owed similar amounts, according to the letter. The letter also pointed out that special regulations adopted after a series of security guard company's bilked workers of several million dollars were not being enforced. The special regulations required the

employer to submit additional documentation to prove the company was current on its payroll, and to post a cash bond with the Department of Labor equal to three months' wages for each of its nonresident workers.

In February, 2004, the Ombudsman wrote to the attorney general to inform her that ISS employees were still complaining of being owed thousands of dollars in unpaid wages, and that they were receiving W-2 withholding statements indicating their wages had been paid, and taxes had been withheld on those wages, when in fact the wages had not been paid at all.

In April, 2005, the Ombudsman wrote a letter to the Secretary of Labor, informing him that all ISS employees were owed at least six paychecks, in spite of Labor's assurances that a compliance case had been opened, and that payrolls were being monitored by its personnel. The letter was copied to the governor and the attorney general.

Finally, in August of 2005, the Ombudsman wrote to the Secretary and Director of Labor to question their decision not to require ISS to comply with the special regulations, and whether they had discretion to simply disregard the regulations.

Island Security Service is reportedly owned by the family of a former CNMI Governor.

There are also several examples of incidents where solid information has been referred to the Attorney General's Office, the Department of Labor and the Division of Immigration, that has either not been acted upon, or worse, has been leaked to the target of the investigation.

For example, Jiang "Jack" Lie was reported to have taken thousands of dollars in bribes from many workers employed by the now-defunct LaMode garment factory that closed in 2005. Department of Labor personnel investigated the allegations against Mr. Lie, and an "immigration hold" was placed on Mr. Lie so that he was unable to depart the Commonwealth. The Director of Labor made findings in a Determination, Notice of Violation and Notice of Hearing dated April 6, 2005, documenting several workers who stated that they had paid Lie amounts ranging from $4,500 to $8,072 to obtain jobs at LaMode, in violation of CNMI law. Lie was interviewed by Labor investigators on February 11, 2005, and denied he had taken money from workers in his capacity as a LaMode office assistant.

The Director of Labor also found that a "Re-Entry Authorization" dated February 24, 2005, allowed Lie to depart the Commonwealth on February 27, 2005. To date, no official explanation has been given explaining what government official authorized Lie's departure from the jurisdiction, or who authorized the lifting of the immigration hold.

Several other informants' tips have been relayed to Department of Labor and Division of Immigration officials concerning the location of factories illegally employing workers on Saipan. Within days of passing the information to the appropriate officials, the informants who provided the original information contacted the Ombudsman's Office to relate that factory managers had informed the illegal workers to "go home" and not come back until they were contacted, since "Labor is going to raid us."

Other investigations seem to have been frustrated through inexperience, apathy or incompetence. For example, in letters and personal conversations occurring in November and December of 2005, the Ombudsman informed various Commonwealth officials,

including those with the Attorney General's Office, Division of Immigration and the Department of Labor, that a 17-year-old girl was dancing at a Garapan strip club.[10] The name of the club, the "club name" of the 17-year-old, and even a picture of the girl was provided. In a follow-up letter dated January 6, 2006, the Ombudsman warned that the girl was to be repatriated in the near future, and urged that her further exploitation be prevented and she be contacted by investigators before she departed the Commonwealth.

Fifteen days later, another letter from the Ombudsman's Office informed officials that the young girl was back in the Philippines. No Commonwealth government official had spoken with the girl or made any effort to contact her in almost three months.[11]

The simple reality is there are few CNMI government officials who will prosecute the politically connected, their campaign contributors or supporters, or members of large, influential families, for even the most egregious labor violations committed against nonresident workers.[12]

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[10] If true, this would be a criminal violation under 6 CMC § 1314, the CNMI's Sexual Exploitation of a Minor statute, the statute requiring all nonresident workers to be at least 18 years of age (3 CMC § 4412) and regulations promulgated by the Attorney General's Office requiring all employees who work in establishments that serve alcoholic beverages to be 21 years of age.

[11] Two very recent incidents are more encouraging. In the first, the Acting Deputy Secretary of Labor, acting on another informant "tip" passed on by the Ombudsman's Office, interviewed six young dancers employed at another strip club and obtained admissions that all six were underage. In the second, an informant "tip" concerning prostitution on Rota was acted upon swiftly by Division of Immigration, the Attorney General's Investigation Unit, and Rota Department of Public Safety personnel, and several arrests were made within a week of the tip being passed on.

[12] Another notable example of unwillingness to prosecute those who break the law is the case of the "39 Egyptians." In 2002, the Office of the Governor received an exemption request for 80 construction workers for the prison project. The request was made by the Pyramid Construction Company. 40 Egyptian workers were permitted to enter under governor's exemptions, processed by the husband of the Pyramid Construction agent who worked in the Department of Labor & Immigration as a labor processor. He processed all of the permits in a few mornings before anyone was at work, bypassing most of the security checks that would normally apply. The work and entry permits for these 40 workers were expedited and approved improperly, according the CNMI's Labor & Immigration Report for 2003. Despite the completion of an investigation that resulted in the "quick and accurate determination of the facts," the official in question was simply allowed to resign his government position.

**Current assessment**

The failure of the CNMI government to allocate sufficient resources[13] to the Department of Labor to do its job has resulted in a system that rewards, not penalizes, employers who violate the law. Prevention appears to have been largely abandoned as an enforcement tool. Administrative enforcement is so moribund that workers and employers alike express bitter frustration at the inefficiency and delay. Criminal prosecution is rarely resorted to, unless the accused is some hapless foreign national.

[13] In truth, the CNMI government does not need to appropriate funds for the Department of Labor. With nonresident worker applications in excess of 30,000 per year, at $275 per application and renewal, Labor generates almost $9,000,000.00 in revenue each year. All that is needed is for the government to allow the Department of Labor to retain an adequate amount to discharge its mandate.

**Summary**

Labor conditions have improved significantly since the late 1990's, when the Ombudsman's Office was created. The number of complaints filed annually has been reduced to its current level of less than 500. In addition, the nature of those complaints is decidedly more mundane, on average, than it was eight years ago.[14]

It should also be noted that certain policy objectives recommended in prior reports have been achieved, and significant progress has been made towards others. For example, the *Federal—CNMI Initiative on Labor, Immigration, and Law Enforcement in the Commonwealth of the Northern Mariana Islands,* Fourth Annual Report (1998), referenced above, recommended the CNMI develop a refugee protection program consistent with the United States' international obligations, and this goal has been achieved.

All pertinent provisions of the Refugee Convention and the Convention Against Torture have been incorporated into Commonwealth law by Public Law 13-61, which amended the Commonwealth Entry and Deportation Act. Then, pursuant to a September 13, 2003, Memorandum of Agreement between several federal agencies and the CNMI government, the CNMI Attorney General promulgated regulations to implement the Commonwealth's obligation to adhere to U.S. Treaty obligations. For nearly the past two years, personnel from the CNMI Attorney General's Office have received extensive

[14] The prior report, at page 8, listed "coerced abortions" among the various forms of worker exploitation the CNMI's nonresident workers were subject to at that time. At least since the current Ombudsman came aboard in 2002, there have been no reported complaints of coerced abortions. Similarly, there have been no reports of "shadow contracts," and few reports of workers being confined to their barracks during non-working hours, or of forced prostitution. Sadly, complaints of illegal recruitment scams and non-payment of wages are still prevalent.

training from U.S. Citizenship and Immigration Services, and the program appears to be functioning as intended.

Another recommended objective in the prior report was development of a computerized alien entry-departure system capable for accurately and effectively capturing information fully compatible with that currently captured under the Immigration and Naturalizations Service's existing system. Significant progress towards this objective has been made, with the development of the CNMI's LIDDS system.

There is still a lot of room for improvement in enforcement by the CNMI Department of Labor: the Department needs to establish effective programs for prevention, more efficient enforcement, and must make a good faith effort to deter repeat offenders with enhanced penalties, including criminal prosecution.

**Benchmarks for future assessments**

I would suggest that the following benchmarks be reviewed periodically in the future as indicators of progress, or lack thereof, in addressing the problems and trends identified and discussed in this report:

1. the Department of Labor's progress in reducing the backlog of labor cases dating back to the late 1990's;
2. increased communication and cooperation with the Federal Ombudsman's Office;
3. a reduction in the number of individual labor complaints filed due to increased prevention and more stringent enforcement;
4. a briefer average time to mediation, time to adjudication, and time to disposition, for individual labor complaints;

5. allocation of resources to the Department of Labor commensurate with the importance of its role in regulating nonresident workers and fairly addressing their grievances, and adequate to discharge its mandate;
6. an increase in the number of regulatory inspections and other preventive measures;
7. evidence of a willingness to prosecute repeat offenders, irrespective of their national origin, political affiliation or the prominence of their family name;
8. evidence of legislative reform efforts driven by long-term policy goals, after appropriate comment and review by affected agencies, civic organizations, trade groups, government officials and members of the general public.

The Federal Ombudsman will provide a brief follow-up to this report, addressing each of the "benchmarks" listed above, and any perceived progress by the local and federal governments, every six months.